

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

#### 24 CFR Part 965

[Docket No. FR-3928-P-01]

#### Streamlining Public Housing Maintenance and Operation Rules

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend regulations on public housing maintenance and operation to streamline and simplify necessary requirements and to eliminate unnecessary requirements.

**DATES:** Comments due date: November 24, 1995.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** William C. Thorson, Acting Director, Administration and Maintenance Division, Room 4214, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-4703 (voice). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or (202) 708-9300. (Other than the "800" TDD number, telephone numbers are not toll-free.)

#### SUPPLEMENTARY INFORMATION:

##### I. Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The burden on the public associated with the information collections is described

more fully below under the heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this information collection to the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

##### II. Background

Upon assuming the leadership of the Department of Housing and Urban Development (HUD) in 1993, Secretary Cisneros made the reinvention of HUD one of his first priorities. HUD's reinvention efforts took place in the context of a broader, government-wide reinvention process, the National Performance Review, under the leadership of Vice President Gore. At that time, HUD established five program goals to accomplish its mission that involved working for healthy growth in cities, providing adequate housing for all, and protection of society's most vulnerable people.

HUD determined that one of the first steps needed in its transformation from the old HUD to a new HUD was the consolidation and streamlining of funding programs. HUD recently submitted to Congress sweeping changes to transform public housing to a resident-based program.

Another aspect of the reinvention involve HUD's rules, which have been at the forefront of HUD's reinvention efforts since those efforts commenced in 1993. The foundation of HUD's regulatory process is Executive Order 12866 (Regulatory Planning and Review) issued by President Clinton on September 30, 1993. This order directs agencies to, among other things, explore regulatory alternatives and, if regulations are determined to be necessary, to select approaches that maximize benefits and involve enhanced public accessibility and participation in the rulemaking process.

HUD has done a comprehensive review of 24 CFR Part 965, PHA-Owned or Leased Projects—Maintenance and Operation. Part 965 contains 8 subparts, covering a wide range of topics. Based on its comprehensive review, HUD has determined that one subpart can be eliminated; three subparts can be revised and simplified; two subparts that are applicable to other housing programs can be consolidated and relocated to a new "general" part that will be applicable to all programs; one subpart will have to be revised to reflect

new statutory requirements; and one subpart recently issued will be unchanged.

##### III. Proposed Changes

Subpart A, Preemption of State Prevailing Wage Rates, makes higher State determined prevailing wage rates "inapplicable" to a contract for PHA-performed work. The "inapplicability" of these higher State rates represents cost savings to public housing agencies (PHAs) permitting limited resources to go further in addressing much needed maintenance. For this reason, HUD does not propose to revise this requirement. At the same time, there are similar requirements in the development regulations, 24 CFR part 941, and in the modernization regulations, 24 CFR part 968. HUD plans to consolidate these requirements in a single regulation in another rulemaking.

Subpart B, Required Insurance Coverage, was codified for the first time on October 5, 1993. It provides policies concerning insurance coverage required under the Annual Contributions Contract when provided by a qualified PHA-Owned insurance entity, pursuant to the HUD Appropriations Act of 1992. A comprehensive review of this subpart indicates that its provisions are the minimum necessary to implement the statutory provisions. No further simplification or streamlining is necessary, except to remove a cross-reference to a provision of the Annual Contributions Contract (ACC), since a new, completely revised ACC with different numbering of the provisions is now being adopted.

Three subparts of this part have a bearing on the Federal government's utility costs associated with the public housing program. Subpart C, Energy Audits and Energy Conservation Measures, deals with a subject that is critical to the long term success, viability and livability of public housing. Conducting energy audits and installation of energy conservation measures has a significant financial impact for both PHAs and the Department. Approximately \$1.5 billion is spent on public housing utility costs annually, most of which is paid by the Federal government. As a result, the current requirement to conduct energy audits and install cost effective energy conservation measures is judicious. At the same time, HUD's review of this subpart reveals that it can be simplified. In revising the text of this subpart, HUD gave consideration to the final rule published in the Federal Register on April 10, 1995 regarding Indian Housing Program Amendments, 24 CFR Parts 905 and 950 (60 FR 18174, 18268). HUD's

Office of Native American Programs reduced the size and scope of the comparable portion of its rule (now 24 CFR 950.805 through 950.825) to a reasonable level that still ensures that energy conservation is appropriately addressed. Accordingly, this subpart is proposed to be revised in substantially the same manner as part 950.

A second subpart of this part that has an effect on utility costs is subpart D, Individual Metering of Utilities for Existing PHA-Owned Projects. Public housing agencies spend over \$1 billion each year for utility costs, a substantial portion of which is funded by Federal operating subsidies. It is appropriate that HUD require PHAs to take reasonable steps to reduce these utility costs. One significant step is determining the extent to which it is cost effective to individually meter projects and require residents to pay utility costs directly, as is currently required by subpart D. Because of its impact on the cost of public housing to the Federal government, HUD is retaining this requirement in substantially its current form. HUD does believe that some streamlining is possible. The revised language is consistent with the new Indian Programs rule at §§ 950.840 through 950.850. (See 60 FR 18268–18269.)

HUD is proposing to eliminate the purpose and definitions sections because they are self-evident. This rule also proposes to eliminate much of the technical language now contained in § 965.404. The language of the current § 965.407 concerning PHA consultation with resident organizations, which is advisory only, is revised to reflect the Department's intent that it be mandatory.

The third subpart with an impact on utility costs is subpart E, Tenant Allowances for Utilities. To the extent individual metering or checkmetering is determined cost effective, it is necessary for a PHA to establish resident allowances for utilities. The current subpart E provides a broad framework and allows PHAs the flexibility to determine the appropriate allowances. This philosophy is consistent with the principles of the reinvention of

government. As a result, HUD will retain subpart E substantially in its current form. However, HUD believes that some streamlining is possible. Revisions similar to those made in the new Indian Programs rule at §§ 950.860 through 950.876 (60 FR 18269–18270) have been made to eliminate the much of the purpose, applicability, definitions and other unnecessary language.

Subpart F, Modernization of Oil-Fired Heating Plants, was issued in 1980 to implement a statutory set-aside of \$25 million to modernize oil-fired heating equipment. This subpart is now obsolete and is proposed to be removed.

HUD plans to consolidate Subpart H, Lead-Based Paint Poisoning Prevention, with similar provisions for other HUD programs. However, that change will be made in a separate rule.

Subpart I, Fire Safety, will be revised in a separate rule that updates provisions throughout HUD rules that deal with this subject. [HUD published amendments to a number of assisted housing rules on July 30, 1992, to ensure that residents are protected from fire hazards. On October 26, 1992, Congress passed the Fire Administration Authorization Act of 1992 (Pub. L. 102–522), which prohibits the use of housing assistance in connection with certain assisted and insured properties, unless various fire protection and safety standards are met. The fire protection and safety standards prescribed by the statute add requirements beyond those contained in this subpart.]

#### IV. Other Matters

##### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

##### *Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and, in so doing, certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule streamlines and reduces the existing administrative burden on PHAs, regardless of whether the recipient is categorized as a large entity or a small entity.

##### *Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this proposed rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The proposed rule does not effect the autonomy of local PHAs. Instead, it streamlines and eliminates requirements currently in effect.

##### *Impact on the Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the proposed rule will not have a significant impact on family formation, maintenance, and well-being, and, therefore, is not subject to review under the Order.

##### *Catalog*

The Catalog of Federal Domestic Assistance numbers for the public housing program is 14.850.

##### *Public Reporting Burden*

The public reporting burden for the information collections contained in this proposed rule are shown in a chart below. These estimates include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

## TABULATION OF ANNUAL REPORTING BURDEN—PROPOSED RULE STREAMLINING PUBLIC HOUSING MAINTENANCE AND OPERATIONS

Description of info. coll.	Section of 24 CFR affected	No. of respondents	No. of responses per respondent	Total ann. responses	Hrs. per response	Total hours
Energy audits every 5 years .....	965.302	3,400	1/5	700	2	1,400
Review of energy contracting soli-citations and contracts .....	965.308	10	1	10	8	80
Benefit/cost analysis .....	965.402	1,360	1/3	454	2	908
Review of util. allowances .....	965.507	1,924	1	1,924	2	3,848
Total Annual Burden (Reduction from current burden of 1,764 hours) .....	.....	.....	.....	.....	.....	6,236

## List of Subjects in 24 CFR Part 965

Grant programs—housing and community development, Housing, Loan programs—housing and community requirements, Small businesses.

Accordingly, 24 CFR part 965, is proposed to be amended as follows:

**PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION**

1. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

**§ 965.205 [Amended]**

2. In subpart B, § 965.205 is amended by removing the phrase “(in section 305 of the ACC)” from the first sentence in paragraph (a).

**§§ 965.303, 965.309, 965.310, 965.315 [Removed]**

3. In subpart C, §§ 965.301, 965.302, and 965.304 through 965.308 are revised, and §§ 965.303, 965.309, 965.310, and 965.315 are removed, to read as follows:

**Subpart C—Energy Audits and Energy Conservation Measures****§ 965.301 Purpose and applicability.**

(a) *Purpose.* The purpose of this subpart is to implement HUD policies in support of national energy conservation goals by requiring PHAs to conduct energy audits and undertake certain cost-effective energy conservation measures.

(b) *Applicability.* The provisions of this subpart apply to all PHAs with PHA-owned housing, but they do not apply to Indian Housing Authorities. (For similar provisions applicable to Indian housing, see part 950 of this chapter.) No PHA-leased project or Section 8 Housing Assistance Payments Program project, including PHA-owned

Section 8 projects, is covered by this subpart.

**§ 965.302 Requirements for energy audits.**

All PHAs shall complete an energy audit for each PHA-owned project under management, not less than once every five years. Standards for energy audits shall be equivalent to State standards for energy audits or as approved by HUD. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the PHA.

**§ 965.304 Order of funding.**

Within the funds available to a PHA, energy conservation measures should be accomplished with the shortest pay-back periods funded first. A PHA may make adjustments to this funding order because of insufficient funds to accomplish high-cost energy conservation measures (ECM), or a situation in which an ECM with a longer pay-back period can be more efficiently installed in conjunction with other planned modernization. A PHA may not install individual utility meters that measure the energy or fuel used for space heating in dwelling units that need substantial weatherization, when installation of meters would result in economic hardship for residents. In these cases, the ECMs related to weatherization shall be accomplished before the installation of individual utility meters.

**§ 965.305 Funding.**

(a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization program, for funding from any available development funds in the case of projects still in development, or for other available funds that HUD may

designate to be used for energy conservation.

(b) If a PHA finances energy conservation measures from sources other than modernization or operating reserves, such as on the basis of a promise to repay, HUD may agree to provide adjustments in its calculation of the PHA's operating subsidy eligibility under the PFS for the project and utility involved if the financing arrangement is cost-beneficial to HUD. (See § 990.107(g) of this chapter.)

**§ 965.306 Energy conservation equipment and practices.**

In purchasing original or, when needed, replacement equipment, PHAs shall acquire only equipment that meets or exceeds the minimum efficiency requirements established by the U.S. Department of Energy. In the operation of their facilities, PHAs shall follow operating practices directed to maximum energy conservation.

**§ 965.307 Compliance schedule.**

All energy conservation measures determined by energy audits to be cost effective shall be accomplished as funds are available.

**§ 965.308 Energy performance contracts.**

(a) *Method of procurement.* Energy performance contracting shall be conducted using one of the following methods of procurement:

(1) Competitive proposals (see 24 CFR 85.36(d)(3)). In identifying the evaluation factors and their relative importance, as required by § 85.36(d)(3)(i) of this title, the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(2) If the services are available only from a single source, noncompetitive proposals (see 24 CFR 85.36(d)(4)(i)(A)).

(b) *HUD Review.* Solicitations for energy performance contracting shall be submitted to the HUD Field Office for review and approval prior to issuance.

Energy performance contracts shall be submitted to the HUD Field Office for review and approval before award.

**§§ 965.408, 965.409, 965.410 [Removed]**

4. In subpart D, §§ 965.401 through 965.407 are revised, and §§ 965.408, 965.409, and 965.410 are removed, to read as follows:

**Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects**

**§ 965.401 Individually metered utilities.**

(a) All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of checkmeters, unless:

(1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;

(2) Change from a mastermetering system to individual meters would not be financially justified based upon a benefit/cost analysis; or

(3) Checkmetering is not permissible under State or local law, or under the policies of the particular utility supplier or public service commission.

(b) If checkmetering is not permissible, retail service shall be considered. Where checkmetering is permissible, the type of individual metering offering the most savings to the PHA shall be selected.

**§ 965.402 Benefit/cost analysis.**

(a) A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective, except as otherwise provided in § 965.405.

(b) Proposed installation of checkmeters shall be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the checkmeters will be more than offset by reduction in future utilities expenditures to the PHA under the mastermeter system.

(c) Proposed conversion to retail service shall be justified on the basis of net savings to the PHA. This determination involves making a comparison between the reduction in utility expense obtained through eliminating the expense to the PHA for PHA-supplied utilities and the resultant allowance for resident-supplied utilities, based on the cost of utility service to the residents after conversion.

**§ 965.403 Funding.**

The cost to change mastermeter systems to individual metering of resident consumption, including the

costs of benefit/cost analysis and complete installation of checkmeters, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization project or for funding from any available development funds.

**§ 965.404 Order of conversion.**

Conversions to individually metered utility service shall be accomplished in the following order when a PHA has projects of two or more of the designated categories, unless the PHA has a justifiable reason to do otherwise, which shall be documented in its files.

(a) In projects for which retail service is provided by the utility supplier and the PHA is paying all the individual utility bills, no benefit/cost analysis is necessary, and residents shall be billed directly after the PHA adopts revised payment schedules providing appropriate allowances for resident-supplied utilities.

(b) In projects for which checkmeters have been installed but are not being utilized as the basis for determining utility charges to the residents, no benefit/cost analysis is necessary. The checkmeters shall be used as the basis for utility charges and residents shall be surcharged for excess utility use.

(c) Projects for which meter loops have been installed for utilization of checkmeters shall be analyzed both for the installation of checkmeters and for conversion to retail service.

(d) Low- or medium-rise family units with a mastermeter system should be analyzed for both checkmetering and conversion to retail service, because of their large potential for energy savings.

(e) Low- or medium-rise housing for elderly should next be analyzed for both checkmetering and conversion to retail service, since the potential for energy saving is less than for family units.

(f) Electric service under mastermeters for high-rise buildings, including projects for the elderly, should be analyzed for both use of retail service and of checkmeters.

**§ 965.405 Actions affecting residents.**

(a) Before making any conversion to retail service, the PHA shall adopt revised payment schedules, providing appropriate allowances for the resident-supplied utilities resulting from the conversion.

(b) Before implementing any modifications to utility services arrangements with the residents or charges with respect thereto, the requisite changes shall be made in

resident dwelling leases in accordance with 24 CFR part 966.

(c) PHAs must work closely with resident organizations, to the extent practicable, in making plans for conversion of utility service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure that will result, and the goals of achieving an equitable structure that will be advantageous to residents who conserve energy.

(d) A transition period of at least six months shall be provided in the case of initiation of checkmeters, during which residents will be advised of the charges but during which no surcharge will be made based on the readings. This trial period will afford residents ample notice of the effects the checkmetering system will have on their individual utility charges and also afford a test period for the adequacy of the utility allowances established.

(e) During and after the transition period, PHAs shall advise and assist residents with high utility consumption on methods for reducing their usage. This advice and assistance may include counseling, installation of new energy conserving equipment or appliances, and corrective maintenance.

**§ 965.406 Benefit/cost analysis for similar projects.**

PHAs with more than one project of similar design and utilities service may prepare a benefit/cost analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the PHA not to perform a benefit/cost analysis on the remaining similar projects.

**§ 965.407 Reevaluations of mastermeter systems.**

Because of changes in the cost of utility services and the periodic changes in utility regulations, PHAs with mastermeter systems are required to reevaluate mastermeter systems without checkmeters by making benefit/cost analyses at least every 36 months. These analyses may be omitted under the conditions specified in § 965.406.

5. Subpart E is revised to read as follows:

**Subpart E—Resident Allowances for Utilities**

Sec.

965.501 Applicability.

965.502 Establishment of utility allowances by PHAs.

965.503 Categories for establishment of allowances.

965.504 Period for which allowances are established.

- 965.505 Standards for allowances for utilities.  
 965.506 Surcharges for excess consumption of PHA-furnished utilities.  
 965.507 Review and revision of allowances.  
 965.508 Individual relief.

### **Subpart E—Resident Allowances for Utilities**

#### **§ 965.501 Applicability.**

(a) This subpart applies to public housing, including Turnkey III Homeownership Opportunities program. This subpart also applies to units assisted under sections 10(c) and 23 of the U. S. Housing Act of 1937 as in effect before amendment by the Housing and Community Development Act of 1974 and to which 24 CFR part 900 is not applicable. This subpart does not apply to Indian housing projects (see 24 CFR part 950).

(b) In rental units for which utilities are furnished by the PHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption of resident-owned major appliances, or for optional functions of PHA-furnished equipment, in accordance with § 965.502(e) and 965.506(b), but no utility allowance will be established.

#### **§ 965.502 Establishment of utility allowances by PHAs.**

(a) PHAs shall establish allowances for PHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.

(b) The PHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.

(c) The PHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the PHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and

shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the PHA and shall be available for inspection by residents.

(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of PHA operations.

(e) The PHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

#### **§ 965.503 Categories for establishment of allowances.**

Separate allowances shall be established for each utility and for each category of dwelling units determined by the PHA to be reasonably comparable as to factors affecting utility usage. The PHA will establish allowances for different size units, in terms of numbers of bedrooms. Other categories may be established at the discretion of the PHA.

#### **§ 965.504 Period for which allowances are established.**

##### *(a) PHA-furnished utilities.*

Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.

##### *(b) Resident-purchased utilities.*

Monthly allowances shall be established at a uniform monthly amount based on an average monthly utility requirement for a year; however, if the utility supplier does not offer residents a uniform payment plan, the allowances established may provide for seasonal variations.

#### **§ 965.505 Standards for allowances for utilities.**

(a) The objective of a PHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

(b) Allowances for both PHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions

furnished by the PHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the PHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.

(c) The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective will depend upon the data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.

(d) In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three.

(2) The climatic location of the housing projects.

(3) The size of the dwelling units and the number of occupants per dwelling unit.

(4) Type of construction and design of the housing project.

(5) The energy efficiency of PHA-supplied appliances and equipment.

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment.

(7) The physical condition, including insulation and weatherization, of the housing project.

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather.

(9) Temperature of domestic hot water.

(e) If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or checkmeters and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning, the PHA shall not include air conditioning in the utility allowances. For systems that offer residents the option to choose air conditioning but can not be checkmetered, residents are to be

surcharged in accordance with § 965.506. If an air condition system does not provide for resident option, residents are not to be charged and these systems should be avoided whenever possible.

**§ 965.506 Surcharges for excess consumption of PHA-furnished utilities.**

(a) For dwelling units subject to allowances for PHA-furnished utilities where checkmeters have been installed, the PHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the PHA's average utility rate. The basis for calculating such surcharges shall be described in the PHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the PHA's average utility rate shall not be subject to the advance notice requirements of this section.

(b) For dwelling units served by PHA-furnished utilities where checkmeters have not been installed, the PHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. Such surcharge schedules shall state the

resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

**§ 965.507 Review and revision of allowances.**

(a) *Annual review.* The PHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 965.505 shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the PHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) *Revision as a result of rate changes.* The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall be retroactive to the first

day of the month following the month in which the last rate change taken into account in such revision became effective.

**§ 965.508 Individual relief.**

Requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate. The PHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the PHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the PHA representative with whom initial contact may be made by residents), and the PHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with § 965.502(c) and in the information given to new residents upon admission.

Dated: August 24, 1995.

MaryAnn Russ,

*Director, Office of Assisted Housing.*

[FR Doc. 95-23643 Filed 9-22-95; 8:45 am]

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